



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: L. RICHARD MARTIN, JR.
Virginia Department of Social Services

FROM: ALLEN T. WILSON
Assistant Attorney General

DATE: October 15, 2003

SUBJECT: Repeal of Regulation 22 VAC 40-110-10 et seq.
Minimum Standards for Licensed Family Day Homes
Proposed Regulation 22 VAC 40-111-10 et seq.
Standards for Licensed Family Day Homes

I have reviewed the proposed repeal of 22 VAC 40-110-10 et seq., Minimum Standards for Licensed Family Day Homes. I also have reviewed the above-referenced proposed regulation, 22 VAC 40-111-10 et seq., Standards for Licensed Family Day Homes, which is being proposed to replace 22 VAC 40-110-10 et seq. I have reviewed these actions to determine if the State Board of Social Services ("State Board") has the statutory authority to repeal the one regulation and promulgate the proposed regulation and if the proposed regulation comports with applicable state law.

Virginia Code § 63.2-1734 mandates that the State Board promulgate regulations to "for the activities, services and facilities to be employed" by licensed child welfare agencies. Virginia Code § 63.2-100 includes family day homes in the definition of "child welfare agency." It appears that the State Board has the authority to repeal 22 VAC 40-110-10 et seq. and promulgate its replacement, 22 VAC 40-111-10 et seq., subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 21 (2002), and has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3219.